

## **REMARKS**

This application has been reviewed in light of the Office Action mailed June 23, 2010. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 1, 2 and 5 – 18 are pending in the application with Claim 1 being in independent form. Claims 19 – 27 have been previously withdrawn from consideration. No new subject matter is introduced into the disclosure by way of the present response.

### **I. Rejection of Claims 1, 2 and 5 – 16 Under 35 U.S.C. § 103(a)**

Claims 1, 2 and 5 – 16 are rejected under 35 U.S.C. § 103(a) as allegedly Obvious over U.S. Patent No. 6,697,652 issued to Georgakoudi in view of U.S. Patent No. 6,293,911 issued to Imaizumi.

In the present Office Action, it is alleged that Georgakoudi discloses "...an image pickup device for converting a living body observed image to video signals by using light irradiated from the light source device for observation; and a processor for generating a living body image from the video signals, the processor including means for generating a living body image having at least a scattering feature of a relative scattering change representing a degree of nucleus variant and structure variant of a living body tissue as image information..." as recited in Claim 1.

However, in Georgakoudi light reflected by a tissue 24 is directed through a spectrograph 30 and into an optical multichannel analyzer 32, with the data then being transmitted to a data processing system 34. Consequently, the light being picked up by the collection fibers 28 is not a living body observed image, but rather the light represents spectral response of the tissue to excitation by light irradiated by a XeCl excimer laser having a

wavelength of 308nm. It is this spectral response information embodied in the received light that is separated by the spectrograph 30 and analyzed by the optical multichannel analyzer 32. At no point is the received light a living body observed image, nor can the data transmitted to the data processing system 34, disclosed in Georgakoudi, be used to generate a living body image.

Moreover, the data transmitted to the data processing system 34 from the optical multichannel analyzer 32 is not a video signal, but rather data representing the results of the analysis performed by the optical multichannel analyzer 32. The data processing system 34 processes this data and generates the video signals necessary for representing the spectral data and derivative information in graphical form, such as the graphs shown in FIG. 2A through 11B.

Regarding Imaizumi, the reference discloses a pickup device for receiving fluorescence images which depict infrared light emanating from an antibody labeled by indocyanine green.

In contrast, the present invention, as recited in Claim 1, has a processor that includes a means for generating a living body image having at least a scattering feature of a relative scattering change representing a degree of nucleus variant and structure variant of a living body tissue as image information. The fluorescence image generated in Imaizumi is not a scattering feature of a relative scattering change representing a degree of nucleus variant and structure variant of a living body tissue.

Therefore, for at least the reasons provided above, Claims 1, 2 and 5 – 16 are believed to be allowable over Georgakoudi and Imaizumi, taken alone or in any proper combination. Accordingly, Applicant respectfully requests withdrawal of the rejection with

respect to Claims 1, 2 and 5 – 16 under 35 U.S.C. § 103(a) over Georgakoudi, in view of Imaizumi.

## **II. Rejection of Claims 17 and 18 Under 35 U.S.C. § 103(a)**

Claims 17 and 18 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Georgakoudi in view of Imaizumi and further in view of U.S. Patent No. 6,161,031 issued to Hochman.

Claims 17 and 18 depend from independent Claim 1 and thus include all the features recited in that independent claim. Therefore, since Hochman fails to overcome the deficiencies identified above with respect to Georgakoudi and Imaizumi, Claims 17 and 18 are believed to be allowable over the cited prior art references for at least the reasons provided above.

Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to Claims 17 and 18 under 35 U.S.C. § 103(a) over Georgakoudi, in view of Imaizumi, and further in view of Hochman.

## **CONCLUSIONS**

In view of the foregoing remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1, 2 and 5 – 18 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,

/Thomas Spinelli/

Thomas Spinelli  
Registration No. 39,533

Scully, Scott, Murphy, & Presser, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343  
TS/DAT:dk